

105TH CONGRESS  
2D SESSION

# S. 2219

To direct the Secretary of the Interior to convey certain irrigation project property to certain irrigation districts in the State of Nebraska.

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IN THE SENATE OF THE UNITED STATES

JUNE 25, 1998

Mr. KERREY introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To direct the Secretary of the Interior to convey certain irrigation project property to certain irrigation districts in the State of Nebraska.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Missouri River Basin,  
5       Middle Loup Division Project Facilities Conveyance Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) PROJECT.—The term “project” means each  
9       of the irrigation projects constructed by the United  
10       States under the Act of December 22, 1944 (com-

monly known as the “Flood Control Act of 1944”) (58 Stat. 887, chapter 665), described as the “Missouri River Basin, Middle Loup Division Project” and locally known as the “Farwell Irrigation Project” and the “Sargent Irrigation Project”.

(2) PROJECT BENEFICIARY.—The term “project beneficiary” means—

(A) the Farwell Irrigation District, Sargent Irrigation District, and Loup Basin Reclamation District, each of which is organized as a subdivision of government under the law of the State of Nebraska;

(B) a combination of the irrigation districts or reclamation district; and

(C) an organization established by 1 or more of the irrigation districts or reclamation district under the law of the State of Nebraska as an interlocal cooperation agency.

(3) PROJECT PROPERTY.—The term “project property” means—

(A) all contracts in effect on the date of enactment of this Act between the United States and a project beneficiary or other person that relate to a project or project facility, including any written or unwritten contract to

1 provide power from a Federal power facility  
2 under the Act of December 22, 1944 (58 Stat.  
3 887, chapter 665);

4 (B) all project distribution and drainage  
5 facilities, all reservoir and related diversion fa-  
6 cilities, and all related land owned by the  
7 United States as of the date of enactment of  
8 this Act that the Secretary determines to be re-  
9 lated to a project;

10 (C) all acquired land (including the surface  
11 estate and the subsurface estate) within a  
12 project;

13 (D) all water rights held by the United  
14 States relating to the project facilities;

15 (E) all right, title, and interest in all out-  
16 standing contracts, leases, licenses, outgrants,  
17 or permits on or relating to land associated  
18 with a project; and

19 (F) all personal property (including operat-  
20 ing equipment, tools, materials, and other tan-  
21 gible personal property) owned by the United  
22 States that is used for the purpose of operating  
23 the project or serving the project facility.

24 (4) PROJECT PURPOSE.—The term “project  
25 purpose” means use of the project property and the

1 water supply of the project (consistent with the re-  
2 cent use and experience with the project and not  
3 limited to the use envisioned when the project was  
4 originally authorized, and consistent with section 8)  
5 to—

6 (A) provide irrigation water for project  
7 land to which the project water rights are as-  
8 signed;

9 (B) enhance the agricultural economy of  
10 the area served by the project;

11 (C) stabilize the water supply from surface  
12 and ground water sources in the area served by  
13 the project;

14 (D) develop and protect fish and wildlife  
15 resources native to the area served by the  
16 project; and

17 (E) develop and manage water- and land-  
18 based recreation facilities in the area that are  
19 related to the project property.

20 (5) SECRETARY.—The term “Secretary” means  
21 the Secretary of the Interior.

22 **SEC. 3. CONVEYANCE.**

23 (a) CONVEYANCE.—

24 (1) IN GENERAL.—On January 1, 2000 (or on  
25 any earlier date that is agreeable to the Secretary

1 and the project beneficiaries), the Secretary may, on  
2 terms in accordance with this Act, convey by quit-  
3 claim deed, patent, or other appropriate instrument,  
4 all right, title, and interest of the United States in  
5 and to the project property to the project bene-  
6 ficiaries, in the name or names of project bene-  
7 ficiaries as the project beneficiaries may determine.

8 (2) CONTAMINATED PROPERTY.—

9 (A) REMEDIAL ACTION.—Notwithstanding  
10 section 120(h)(3) of the Comprehensive Envi-  
11 ronmental Response, Compensation, and Liabil-  
12 ity Act of 1980 (42 U.S.C. 9620(h)(3)) or any  
13 other law, the Secretary shall make the convey-  
14 ance under paragraph (1) not later than Janu-  
15 ary 1, 2000, without regard to whether all nec-  
16 essary remedial action required under that Act  
17 on any part of the project property has been  
18 completed by that date.

19 (B) EFFECT.—Subparagraph (A) does  
20 not—

21 (i) relieve the United States of the ob-  
22 ligation to complete any required remedial  
23 action expeditiously; or

24 (ii) place any obligation on the project  
25 beneficiaries to conduct or contribute to

1 payment of the costs of any remedial ac-  
2 tion.

3 (3) COMPLETION OF NEPA STUDIES AND RE-  
4 PORTS.—The Secretary shall cause all studies and  
5 reports required on the project property under the  
6 National Environmental Policy Act of 1964 (42  
7 U.S.C. 4321 et seq.) relating to the conveyance  
8 under paragraph (1) to be completed as far in ad-  
9 vance of January 1, 2000, as practicable.

10 (b) CONSIDERATION.—The conveyance of the project  
11 property under subsection (a) shall be for consideration  
12 totaling \$5,030,000, to be paid to the United States for  
13 credit against the Reclamation Projects Funds for the  
14 Missouri River Basin Project, as follows:

15 (1) PAYMENT BY PROJECT BENEFICIARIES.—

16 (A) IN GENERAL.—On the date of convey-  
17 ance, the project beneficiaries shall pay the Sec-  
18 retary \$3,530,000.

19 (B) CREDITING OF CONTRACT PAY-  
20 MENTS.—There shall be credited against the  
21 amount specified in subparagraph (A) the  
22 amount of any payments made by the project  
23 beneficiaries between July 1, 1998, and Decem-  
24 ber 31, 1999, under contracts between the  
25 project beneficiaries and the United States.

1           (2) PAYMENT BY POWER PRODUCERS.—

2           (A) IN GENERAL.—On the date of convey-  
3           ance, the power producers under the Pick-Sloan  
4           Missouri Basin Program shall pay the Sec-  
5           retary \$1,500,000.

6           (B) PAYMENT SOURCE.—As a source of  
7           funds for the payment under subparagraph (A),  
8           the power producers may use power sale reve-  
9           nues received in fiscal year 1998 or any subse-  
10          quent fiscal year in which the amount of power  
11          sale revenues received exceeds the amount of in-  
12          terest and operation and maintenance obliga-  
13          tions.

14          (c) SATISFACTION OF OUTSTANDING OBLIGA-  
15          TIONS.—

16          (1) IN GENERAL.—The payment of the sums  
17          provided for in subsection (b) shall be in full and  
18          complete satisfaction of all obligations against the  
19          project property, the project beneficiaries, and Mis-  
20          souri River Basin power producers existing before  
21          the date of conveyance of the project property under  
22          any contracts entered into between the United  
23          States, the project beneficiaries, or the Missouri  
24          River Basin power producers or under any obliga-  
25          tions that may have been required by the Act of De-

1        cember 22, 1944 (58 Stat. 887, chapter 665) or  
2        other related Federal law.

3            (2) SATISFACTION OF OBLIGATIONS.—The com-  
4        pletion of the conveyance of all project facilities  
5        under this Act and the payment of the consideration  
6        specified for the projects shall constitute full satis-  
7        faction of any and all obligations for further pay-  
8        ments or repayments by the respective project bene-  
9        ficiaries or by the Missouri River Basin power pro-  
10      ducers for irrigation benefits of the project property  
11      and for any other benefits conveyed to the project  
12      beneficiaries.

13      (d) CONVEYANCE DOCUMENTS.—

14            (1) IN GENERAL.—With the assistance of the  
15      project beneficiaries, the Secretary—

16            (A) shall execute and deliver to the project  
17      beneficiaries all necessary conveyance docu-  
18      ments (including quitclaim land deeds, court  
19      proceedings, decrees, bills of sale, certificates of  
20      title, lease contract transfers, water rights cer-  
21      tificates and amendment documents, and notice  
22      filings) and make all such filings as may be re-  
23      quired of the transferor; and



1 (B) take all such actions as may be re-  
2 quired to consummate the conveyance of project  
3 property.

4 (2) FILING COSTS.—The cost of any required  
5 filing of documents shall be paid by the project bene-  
6 ficiaries.

7 (e) ASSUMPTIONS OF OBLIGATIONS.—On the date of  
8 the conveyance under subsection (a), the project bene-  
9 ficiaries shall—

10 (1) assume the rights and responsibilities under  
11 the contracts, leases, licenses, outgrants, and per-  
12 mits referred to in section 2(3)(E); and

13 (2) during the continued term of each contract,  
14 lease, license, outgrant, and permit, carry out all re-  
15 sponsibilities of the United States under the con-  
16 tract, lease, license, outgrant, or permit unless re-  
17 leased by the holder of the contract, lease, license,  
18 outgrant, or permit.

19 (f) NO DIMINISHMENT OF ESTATE.—The Secretary  
20 shall not transfer, modify, or restrict the interest of the  
21 United States in any part of the project property after  
22 the date of enactment of this Act and before the date of  
23 the conveyance under subsection (a).

24 (g) EFFECT OF AGREEMENT BY PROJECT BENE-  
25 FICIARIES.—

1           (1) IN GENERAL.—By accepting the conveyance  
2       under subsection (a), the project beneficiaries  
3       agree—

4           (A) to operate, maintain, repair, replace,  
5       and rehabilitate the project in a manner de-  
6       signed to carry out the project purposes; and

7           (B) to cooperate with each person holding  
8       a contract, lease, license, outgrant, or permit  
9       referred to in section 2(3)(E) so as to ensure  
10      that the rights of the person under the con-  
11      tract, lease, license, outgrant, or permit are pre-  
12      served after the conveyance.

13          (2) NOTIFICATIONS.—The project beneficiaries  
14      shall be responsible for notifying all State, regional,  
15      and local authorities (including authorities respon-  
16      sible for dam safety, monitoring, and inspections,  
17      water quality monitoring, and inspections and ad-  
18      ministration of water rights) regarding the convey-  
19      ance of project property and the assumption of own-  
20      ership of the project.

21          (h) PAYMENT OF NEPA STUDY COSTS.—All costs  
22      incurred by the United States in preparation of studies  
23      and reports required under the National Environmental  
24      Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to  
25      the conveyance under subsection (a)—

1           (1) up to the sum of \$170,000, shall be paid  
2           equally by the United States and the project bene-  
3           ficiaries; and

4           (2) in excess of \$170,000, shall be paid solely  
5           by the United States.

6 **SEC. 4. MIDDLE LOUP DRAINAGE FACILITIES AND LAND.**

7           (a) RESPONSIBILITY FOR DRAINAGE WORK.—

8           (1) IN GENERAL.—Except for any drainage  
9           work that is made necessary by acts or omissions of  
10          project beneficiaries in connection with project oper-  
11          ations, any repair or modification of drainage work  
12          in existence on the date of enactment of this Act or  
13          any development of new additional drainage work  
14          that the project beneficiaries, in cooperation with  
15          Loup City, Nebraska, and the landowners on whose  
16          land drainage works exist at any time, determine is  
17          necessary to satisfactorily limit or reduce ground  
18          water encroachment on the land described in sub-  
19          section (b), shall be the financial responsibility of  
20          the United States to the extent provided in para-  
21          graph (2).

22          (2) RACHETING DOWN OF FINANCIAL RESPON-  
23          SIBILITY OF THE UNITED STATES.—For drainage  
24          work performed in the following fiscal years, the  
25          United States shall have financial responsibility for

1       the following percentages of the cost of the drainage  
 2       work, and the project beneficiaries shall have finan-  
 3       cial responsibility for the remainder:

<b>Fiscal year:</b>	<b>Percentage:</b>
2000 .....	100
2001 .....	95
2002 .....	90
2003 .....	85
2004 .....	80
2005 .....	75
2006 .....	70
2007 .....	65
2008 .....	60
2009 .....	55
2010 .....	50
2011 .....	45
2012 .....	40
2013 .....	35
2014 .....	30
2015 .....	25
2016 .....	20
2017 .....	15
2018 .....	10
2019 .....	5
2020 and thereafter .....	0.

4       (b) DESCRIPTION OF LAND.—The land described in  
 5 this subsection is all land—

6           (1) in which the United States has any interest  
 7       in the valley of the Middle Loup River in and  
 8       around Loup City, Nebraska;

9           (2) that was developed or acquired by the  
 10       United States for the purposes of collecting and  
 11       draining excess ground water; and

12          (3) that is entirely outside the political subdivi-  
 13       sion boundaries of the project beneficiaries.

1 **SEC. 5. LIABILITY.**

2       Beginning on the date of the conveyance of the  
3 project property under section 3(a), the United States  
4 shall not be liable for damages arising out of any act,  
5 omission, or occurrence relating to the project property or  
6 a project except for damages caused by an act or omission  
7 of the United States or an employee, agent, or contractor  
8 of the United States before that date.

9 **SEC. 6. MAINTENANCE OF PROJECT PURPOSES AND BENE-**  
10 **FITS AND CREATION OF TRUST FUND.**

11       (a) CONTINUATION OF PROJECT PURPOSES.—

12           (1) IN GENERAL.—All project property con-  
13 veyed under section 3 shall, to the extent prac-  
14 ticable, be operated and maintained to achieve the  
15 project purposes.

16           (2) APPLICABILITY OF LAWS.—Operations of  
17 all project property conveyed under section 3 shall  
18 be subject to Federal and State laws under which  
19 the irrigation districts and reclamation district were  
20 established and the irrigation districts and reclama-  
21 tion district conduct operations.

22           (3) OTHER USES OF PROJECT FACILITIES.—All  
23 other uses of project facilities consistent with those  
24 laws and the operation of irrigation facilities, includ-  
25 ing fish, wildlife, and recreation uses, shall be pre-

1 served, protected, and enhanced to the extent prac-  
 2 ticable by the project beneficiaries.

3 (b) NEBRASKA-MIDDLE LOUP RIVER COMMUNITY  
 4 ENVIRONMENTAL TRUST FUND.—

5 (1) ESTABLISHMENT.—As a condition to the  
 6 conveyance under section 3, the project beneficiaries  
 7 shall establish a fund, to be known as “Nebraska-  
 8 Middle Loup River Community Environmental Trust  
 9 Fund”.

10 (2) ADMINISTRATION.—The fund shall be ad-  
 11 ministered by an interlocal cooperation agency, orga-  
 12 nized under State law by the project beneficiaries,  
 13 that includes at least—

14 (A) 1 member selected by the Loup Basin  
 15 Reclamation District;

16 (B) 1 member each selected by the Farwell  
 17 Irrigation District and the Sargent Irrigation  
 18 District;

19 (C) 1 member from the Nebraska Game  
 20 and Parks Commission, to be selected by the  
 21 Commission;

22 (D) 1 member from the Nebraska Natural  
 23 Resources Commission, to be selected by the  
 24 Commission;

1 (E) 1 member of the Lower Loup Natural  
2 Resources District, selected by the District; and

3 (F) 1 member from the Nebraska Depart-  
4 ment of Water Resources, to be selected by the  
5 Governor of the State of Nebraska.

6 (3) DEPOSIT.—On receipt of payment of con-  
7 sideration under section 3(b), the Secretary shall de-  
8 posit the payment in the fund.

9 (4) USE OF FUND.—

10 (A) IN GENERAL.—Amounts in the fund  
11 shall be used to preserve, protect, enhance, and  
12 manage project property in a manner that the  
13 interlocal cooperation agency determines is nec-  
14 essary to achieve the project purposes, including  
15 actions to—

- 16 (i) stabilize water supplies;
- 17 (ii) conserve water and land resources;
- 18 (iii) improve and enhance fisheries  
19 and recreational opportunities; and
- 20 (iv) expand knowledge of water and  
21 land sources for enhancing project oper-  
22 ations to improve the service of project  
23 purposes.

24 (B) PROHIBITION.—Amounts in the fund  
25 shall not be used for any routine operation and

1 maintenance work by the project beneficiaries  
2 or any cooperator, lessee, licensee, or permittee  
3 of the project beneficiaries.

4 **SEC. 7. ARCHAEOLOGICAL PRESERVATION RESPONSIBIL-**  
5 **ITIES.**

6 (a) IN GENERAL.—The Secretary shall complete all  
7 investigation and preservation activities required under  
8 the National Historic Preservation Act (16 U.S.C. 470 et  
9 seq.) at archaeological sites on project property that, be-  
10 fore the date of the conveyance under section 3(a), have  
11 been identified as being subject to the requirements of  
12 that Act.

13 (b) EASEMENT.—At the time of the conveyance of the  
14 project property, the project beneficiaries shall convey to  
15 the Secretary an easement to each archaeological site de-  
16 scribed in subsection (a) for the purpose of retaining ac-  
17 cess to and full use of the site for the purposes of conclud-  
18 ing any required archaeological activity at the site.

19 (c) EFFECT ON PROJECT OPERATION.—The Sec-  
20 retary shall—

21 (1) ensure that archaeological activity at an ar-  
22 chaeological site described in subsection (a) does not  
23 adversely affect the integrity of the operation any  
24 project property; or



1           (2) to the extent that it is not practicable for  
2       the Secretary to avoid any adverse effect, provide  
3       such alternative facilities as are necessary to main-  
4       tain project integrity.

5 **SEC. 8. MODIFICATION OF PROJECT PURPOSES.**

6       The purposes of the project are modified to exclude  
7 flood control.

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